

**U S Army Corps  
of Engineers**  
Huntington District

# Public Notice

In reply refer to Public Notice No.

**LRH-2006-2294-TUG**

Issuance Date:

**April 24, 2008**

Stream: **Peg and Mill Forks of Miller  
Creek and Miller Creek**

Closing Date:

**May 24, 2008**

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

**PUBLIC NOTICE:** The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

**REGULATORY PROGRAM:** Since its early history, the United States Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

**SECTION 10:** The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

**SECTION 404:** The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

**TO WHOM IT MAY CONCERN:** The following application has been submitted for a Department of the Army Permit under the provisions of Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application.

**APPLICANT:** CONSOL of Kentucky Inc.  
1800 Washington Road  
Pittsburgh, PA 15241

**LOCATION:** The proposed Peg Fork Surface Mine is located 2.1 miles northeast of Chatтары, in Mingo County, West Virginia (*as depicted on the Williamson, WV USGS Topographic Quadrangle at Lat: 37°43'35" and Lon: 82°15'56"*).

**DESCRIPTION OF THE PROPOSED WORK:** The applicant requests authorization to discharge dredged and/or fill material into waters of the United States in order to facilitate operation of the Peg Fork Surface Mine (PFSM), which would involve construction of eight valley fills, necessary for the placement of excess spoil material generated through surface coal mining activities including the Contour and Area Mining Methods. In addition, the project would involve the construction of ten sediment ponds. The proposed PFSM encompasses approximately 817 surface acres. This project would involve the extraction of coal reserves within the following seams: Lower Freeport, Upper Kittanning, Middle Kittanning Leader, Middle Kittanning, Five Block, Stockton 'A', Stockton, Coalburg, Buffalo Creek, Lower Buffalo Creek and the Winifrede.

The applicant has delineated a total of 56,553 linear feet of jurisdictional waters at this site, which includes: 9,450 linear feet of perennial streams, 30,345 linear feet of intermittent streams and 16,668 linear feet of ephemeral streams. Surface waters from the review area drain into Miller Creek, which is a tributary of the Tug River. The Tug River is a navigable water of the United States.

Implementation of the proposed mining activities would involve permanent impacts to 1,755 linear feet of perennial stream, 8,485 linear feet of intermittent stream and 5,263 linear feet of ephemeral stream. Permanent impacts would result from the placement of fill material associated with the construction of the proposed valley fills. In addition, the project would involve temporary impacts to 4,098 linear feet of perennial stream, 1,690 linear feet of intermittent stream and 740 linear feet of ephemeral stream. The above-mentioned temporary impacts would result from the proposed discharge, excavation and construction of sediment ponds and transport corridors.

**ALTERNATIVE ANALYSIS:** The project is not water dependent and does not require access to or siting within waters of the United States to fulfill its basic purpose. Practicable alternatives that do not involve waters of the United States are presumed to be available unless clearly demonstrated otherwise. The applicant is required to provide an alternative analysis that must overcome that presumption prior to receiving authorization for the placement of fill material. The applicant has submitted the required alternative analysis and it is currently being reviewed.

**MITIGATION PLAN:** The applicant has provided a conceptual compensatory mitigation plan (CMP) to offset the unavoidable impacts to jurisdictional waters of the United States, which are

regulated by the Department of the Army, Corps of Engineers. The conceptual CMP proposes enhancement measures on Peg Fork and Mill Fork to offset the Hydrology, Biochemical, Plant Community and Habitat Functions proposed to be impacted. The goals of the conceptual CMP are to reduce sediment runoff, improve aquatic habitats for benthic macroinvertebrates and fish, restore stream functions by stabilizing eroded and collapsed banks, plant native riparian vegetation, and improve the overall aesthetic qualities of the streams.

**WATER QUALITY CERTIFICATION:** Pursuant to Section 401 of the Clean Water Act, a Water Quality Certification (WQC) is required for this project. It is the applicant's responsibility to obtain WQC from the West Virginia Department of Environmental Protection.

**HISTORIC AND CULTURAL RESOURCES:** The National Register of Historic Places (NRHP) has been consulted and no properties are currently listed on the register in the area affected by the project. This public notice serves as coordination with the State Historic Preservation Office for their review regarding historic properties. Comments concerning archaeological sensitivity of a project area should be based upon collected data.

**ENDANGERED/THREATENED SPECIES REVIEW:** This public notice also serves as coordination with the United States Fish and Wildlife Service (USFWS) regarding threatened or endangered species. The proposed project lies within the distribution range of the endangered Indiana bat (*Myotis sodalis*).

The Huntington District has consulted the most recently available information and has determined the project is not likely to affect the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of habitat of such species that has been determined to be critical. This public notice serves as a request to the USFWS for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area that would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

**PUBLIC INTEREST REVIEW AND COMMENT:** Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water

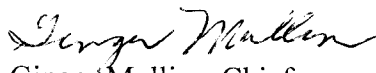
quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Any person may submit cumulative impact information, which is substantive and specifically associated with the proposed action. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

**SOLICITATION OF COMMENTS:** The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

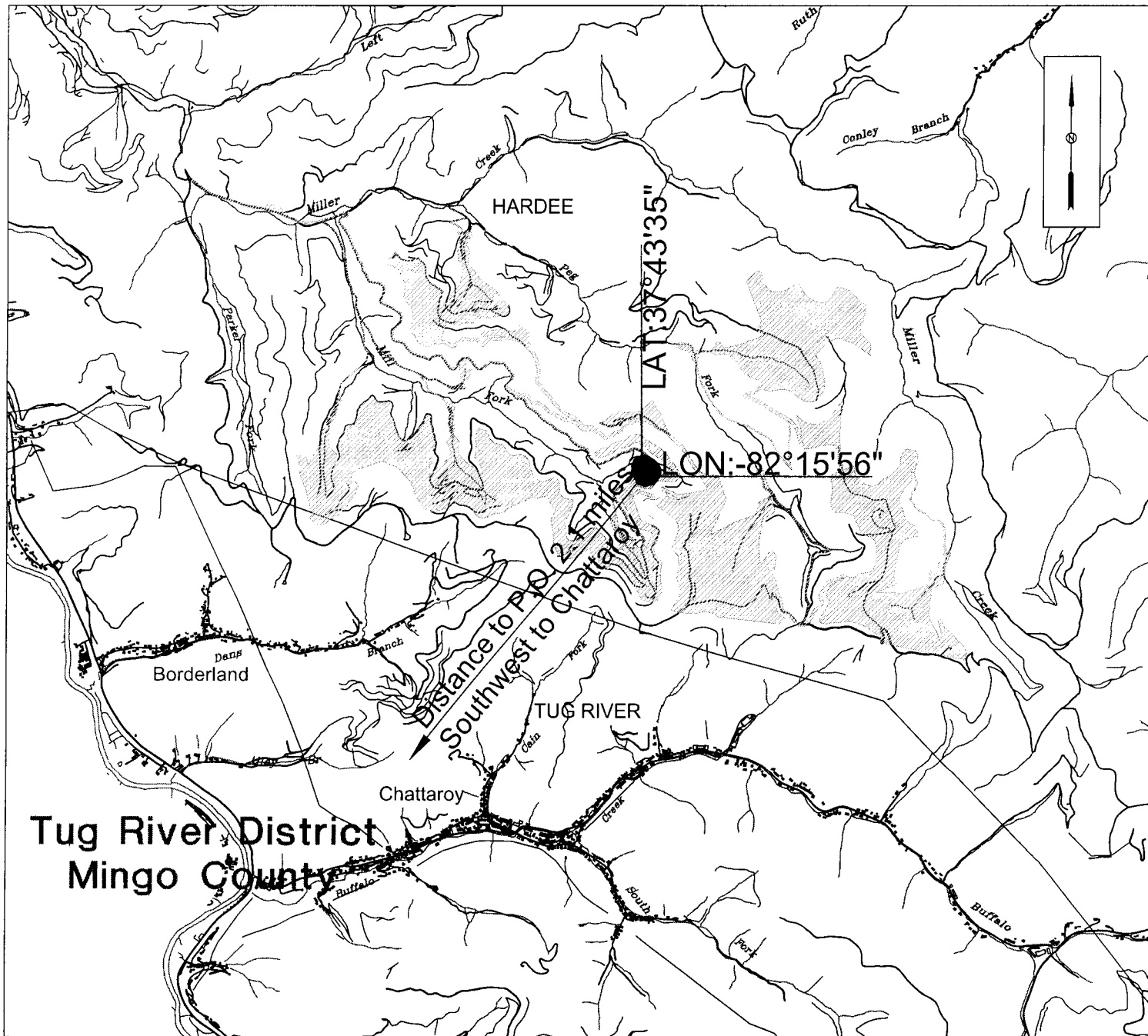
**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

South Regulatory Permit Section - CELRH-OR-FS-2006-2294-TUG  
U. S. Army Corps of Engineers Huntington District  
502 Eighth Street  
Huntington, West Virginia 25701-2070

Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Mr. Michael Hatten at (304) 399-5710.

  
Ginger Mullins, Chief  
Regulatory Branch

(W)



**Tug River District  
Mingo County**

